



National College for
Teaching & Leadership

Ms Johanna McKay: Professional conduct panel outcome

**Panel decision and reasons on behalf of the
Secretary of State for Education**

February 2017

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Professional conduct panel decision and recommendations, and decision on behalf of the Secretary of State

Teacher: Ms Johanna McKay
Teacher ref number: 8477240
Teacher date of birth: 27 August 1962
NCTL case reference: 10745
Date of determination: 24 February 2017
Former employer: Ryde Junior School, Isle of Wight

A. Introduction

A professional conduct panel (“the panel”) of the National College for Teaching and Leadership (“the National College”) convened on 20 – 24 February 2017 at 53 to 55 Butts Road, Earlsdon Park, Coventry CV1 3BH to consider the case of Johanna McKay.

The panel members were Mr Martin Greenslade (lay panellist – in the Chair), Ms Jean Carter (lay panellist), and Mr Ian Carter (teacher panellist).

The legal adviser to the panel was Mr Robin Havard of Blake Morgan LLP, solicitors.

The presenting officer for the National College was Mr Peter Lownds of Counsel, instructed by Nabarro LLP.

Ms Johanna McKay joined the proceedings via Skype and was assisted by her colleague, Individual F.

Other than those parts of the hearing which took place in private when the panel was hearing evidence of a sensitive nature, the hearing took place in public. The entire hearing was recorded. The panel’s decision was announced in public.

B. Allegations

The panel considered the allegations set out in the Notice of Proceedings dated 2 October 2014.

It was alleged:

That Ms Johanna McKay was guilty of unacceptable professional conduct and/or conduct that may bring the profession into disrepute in that:

Whilst employed at Ryde Junior School (“the School”), Isle of Wight, between 2005 and 2013, she:

1. Attended work under the influence of alcohol on one or more occasions including:
 - a. 13 December 2005;
 - b. 14 June 2012;
2. In around November 2012, spoke to a parent (Witness C) who was at the time with pupils (Witness C’s children) and their friends near the School, she:
 - a. Smelt of alcohol,
 - b. Appeared distressed,
 - c. Told her that:
 - i. ‘[Redacted]’,
 - ii. ‘[Redacted]’,
 - iii. ‘[Redacted]’,
 - iv. ‘[Redacted]’,
 - d. [Redacted];
3. Withdrawn;
4. Told a colleague, Witness A, that she had leukaemia when she did not;
5. Told a colleague, Witness B, that she had ME when she did not;
6. Her actions at 3, 4, and 5 above were dishonest;

That she had been convicted of the following relevant offences, in that:

7. On 15 March 2005, at Isle of Wight Magistrates Court she was convicted of driving a motor vehicle with excess alcohol and failing to stop after an accident on 8 March 2005. She was sentenced to a community rehabilitation order for 12 months (subsequently revoked) and disqualification from driving for 28 months. She was ordered to pay costs of £70.00;
8. On 26 June 2009, at Isle of Wight Magistrates Court she was convicted of driving a motor vehicle with excess alcohol on 14 June 2009 to 15 June 2009. She was sentenced to a community rehabilitation order 12 months unpaid work requirement 150 hours and disqualification from driving 36 months.

Ms McKay denied allegations 1 to 6, and therefore also denied that she was guilty of unacceptable professional conduct or of conduct which may bring the profession into disrepute.

Whilst Ms McKay admitted the facts of allegations 7 and 8, she denied that they amounted to the commission of relevant offences.

C. Preliminary applications

Application for anonymisation of witnesses

In the NCTL bundle, there was a list of three witnesses who were to be anonymised. Witness A and Witness B, both of whom were adults and the presenting officer volunteered that there was no basis on which there was a requirement for either to be anonymised.

However, with regard to Witness C who features in allegation 2, the panel concluded that it was in the interests of justice that she should be anonymised. Were she not to be anonymised, there was a risk that Witness C's children, who had been pupils at the school, could be identified.

Ms McKay made an application that she should be anonymised along with the two witnesses she intended to call.

The panel concluded that it would not be in the interests of justice, or indeed the public interest, for Ms McKay to be anonymised as she was the subject of the allegations and the decision of the panel would be made in public.

As for the two witnesses, it was considered to be in the interests of justice that one of the witnesses, Witness D, should be anonymised as the evidence he may be required to provide to the panel was of a highly sensitive and personal nature which could adversely affect the private life of Witness D.

The other witness, Witness E, may have to provide sensitive evidence in respect of Ms McKay but it was not felt by the panel that it was in the interests of justice for Witness E to be anonymised even though his evidence may have to be heard in private.

Application for the hearing to take place in private

Ms McKay applied for the hearing to be in private as the evidence in support of certain of the allegations, and the explanations which she may be required to provide to the panel, involved highly sensitive details of her personal life and also touched on her medical condition.

The panel was sympathetic to the application and decided that it was in the interest of justice that any evidence which touched on Ms McKay's medical history would be heard in private.

Amendment of allegations

The presenting officer applied for an amendment to allegation 4 such that instead of referring to Mr A, it would now refer to Witness A.

In respect of allegation 5, it would now refer to Witness B as opposed to Mr B.

The panel granted the applications.

At the beginning of the second day of the hearing, the presenting officer informed the panel that he would wish to withdraw allegation 3. The panel noted that the NCTL would not be pursuing that allegation against Ms McKay.

D. Summary of evidence

Documents

In advance of the hearing, the panel received a bundle of documents which included:

Section 1: Chronology and anonymised pupil list – pages 2 to 7

Section 2: Notice of Proceedings and Response – pages 9 to 17a

Section 3: NCTL witness statements – pages 18 to 41

Section 4: NCTL documents – pages 43 to 93

Section 5: Teacher documents – pages 95 to 366

In addition, following an application on the part of the presenting officer, the panel agreed to accept the following:

Three missing pages from the statement of Witness B (page numbers 19, 23 and 24).

An email from Ms McKay to Witness F of 15 June 2012 (page 47a).

An email from Individual A to Witness B of 5 December 2012 (page 64a).

A letter from Witness B to Ms McKay dated 17 December 2012 (pages 64b and 65).

In addition, the NCTL applied for leave from the panel to introduce a letter from Nabarro LLP to Individual E of 10 February 2017 (pages 367 to 368) and a report from Individual E to Nabarro LLP of 16 February 2017 (pages 369 to 370).

Prior to giving evidence, Ms McKay provided a two-page response (pages 371 to 372).

The panel allowed all the additional documents into evidence.

The panel members confirmed that they had read all of the documents in advance of the hearing.

Witnesses

The panel heard oral evidence from the following witnesses called by the presenting officer:

- Witness B, Head of the Junior School at Ryde School, Isle of Wight;
- Witness F, Senior Teacher at Ryde School, now retired;
- Witness A, Deputy Head Teacher at Ryde School;
- Witness C, Parent, who gave evidence via Skype.

The panel heard oral evidence from the following witnesses called by Ms McKay

- Witness D
- Witness E
- Ms McKay also gave evidence on her own account.

E. Decision and reasons

The panel announced its decision and reasons as follows:

The panel had carefully considered the case before it and had reached a decision.

The panel confirmed that it had read all the documents provided in the bundle in advance of the hearing.

Brief Summary

Ryde School ("the School") is an independent school and pupils range from age 3 to 18 years. There are approximately 760 pupils at the School incorporating prep school, juniors and seniors. Of the total, some 244 pupils are enrolled at the junior school.

Ms McKay had taught at the School for a number of years. She was a class teacher for year 5 and was in charge of ICT, drama and productions. She would also help out with extra-curricular activities.

On 14 June 2012, Ms McKay attended school and her behaviour was such that she was considered unfit to teach and was sent home. Ms McKay was suspended and her conduct was investigated. At the conclusion of a series of investigations, and also a period during which Ms McKay suffered from ill health, by a letter of 12 April 2013, Ms McKay was informed that her suspension had been lifted and that Ms McKay would not be the subject of a disciplinary hearing.

On 17 June 2013, Ms McKay attended a hearing at the School at the conclusion of which the Head of Junior School, Witness B, resolved that there had been a loss of trust and confidence in Ms McKay as an employee and her employment was terminated. Ms McKay was informed of Witness B's decision by a letter of 21 June 2013.

Findings of fact

Our findings of fact are as follows:

The panel found the following allegations against you proven, for these reasons:

Whilst employed at Ryde Junior School ("the School"), Isle of Wight, between 2005 and 2013:

That you are guilty of unacceptable professional conduct and/or conduct that may bring the profession in to disrepute in that you:

1. Attended work under the influence of alcohol on one or more occasions including:

a. 13 December 2005,

The Head Teacher of the Junior School, Witness B, gave evidence to the panel and confirmed that a colleague had reported to him that it was possible to smell alcohol on Ms McKay's breath.

Witness B spoke with Ms McKay and he too could smell alcohol on Ms McKay's breath.

Witness B sent Ms McKay home for the morning. He met with her later in the day to discuss the events of the morning and to confirm that the School wished to support Ms McKay.

Witness B sent a letter to Ms McKay on the same day, namely 13 December 2005, in which he confirmed that this was the second time in the past year that Ms McKay had been unable to work as a result of drink. In the letter, an offer of counselling was made.

Ms McKay denied that she was under the influence of alcohol when she attended the School. She accepted that she had drunk some wine late the previous night but had not drunk to excess.

The panel preferred the evidence of Witness B, particularly as his observation and assessment of the events of 13 December 2005 were confirmed in writing by letter of the same date.

Consequently, the panel found allegation 1.a. proved.

b. 14 June 2012;

The panel heard evidence from Witness F who, at the material time, was a senior teacher at the School, and also Witness B in relation to Ms McKay's conduct when she attended school on 14 June 2012.

Witness F stated that she had arrived at the School as usual at approximately 7:15am. Registration would then take place at 8:25am. All staff members were required to be in their form room 10 minutes before that time. Witness F stated that Ms McKay appeared in the doorway of her office before registration and Witness F was extremely concerned at Ms McKay's behaviour.

Witness F had asked Ms McKay how she was but there was no response. Some three or four minutes passed during which she could not elicit a response from Ms McKay. Witness F said, "it was almost like a thick fog had come over her and her face was inanimate".

Witness F did not consider that Ms McKay was fit to teach and, once she had got Ms McKay into her room, she went to find another member of staff from the library to supervise Ms McKay's class. She then reported the matter to Witness B.

Witness F said in her statement that there had been a number of occasions when she thought she could smell alcohol on Ms McKay's breath. When giving her evidence, she said that there were approximately six occasions over three or four years when this happened although there was no mention of Witness F being able to smell alcohol on Ms McKay's breath on the morning of 14 June 2012.

Witness B asked Ms McKay what lessons she was teaching that day. She responded in a slow and deliberate tone but was unable to recall her timetable.

Witness B was in no doubt that Ms McKay was unfit to teach and deliver a lesson nor did he consider her fit to be responsible for the children's safety. He sent Ms McKay home despite protestations from Ms McKay.

Later on the same day, Witness B prepared a note which was signed by both him and Witness F. It was consistent with the written and oral evidence provided by Witness F and Witness B. Witness B said in the note that Ms McKay, "appeared to be under the influence of drink or drugs as she appeared dazed and had a glazed look".

Ms McKay's account of what took place on 14 June 2012 was inconsistent and unreliable.

Ms McKay stated that she had been working very late the night before, drafting reports for the children although Witness B stated that no reports had been submitted by Ms McKay.

Ms McKay also complained of feeling unwell with stomach cramps and then suggested that, later that day, she suffered [redacted]. Ms McKay had also stated that a number of children had fallen ill with a sickness bug.

The panel heard from Witness E who gave evidence in support of Ms McKay. Whilst the panel did not doubt that Witness E was attempting to assist the panel, his evidence was unreliable. Indeed, his written statement was materially different to his oral evidence.

[Redacted]

In letters of 7 December 2012 and 25 January 2013 to Witness B and Individual B of the School respectively, Ms McKay's GP, Individual E, makes no mention of Ms McKay having suffered such an event in June 2012. However, Individual E describes Ms McKay suffering from extreme stress and inflammation of the upper gut.

In the letter of 7 December 2012, Individual E stated that, 'there was some concern that some of her symptoms may have been due to an excess of alcohol intake but she has always insisted that this is not so.'

Individual E went on to say, 'the symptoms seemed to start around June of this year...'

Finally, the panel had taken into account the written statements of Individual C and Individual D who both indicated that they had not smelled alcohol on Ms McKay's breath at any time, nor had they seen Ms McKay under the influence of alcohol whilst at work at the school.

On the balance of probabilities, the panel preferred the evidence of Witness F and Witness B. The panel found that Ms McKay attended School on 14 June 2012 and was

under the influence of alcohol. Witness B concluded that she was in no fit state to teach and that she did not seem in control of herself. Indeed, when leaving Witness F's office, Ms McKay staggered into the door frame in what is described as, "a drunken manner".

Witness F was asked to search Ms McKay's desk drawers, and she found a bottle of mouthwash. Whilst Ms McKay indicated that she would regularly use mouthwash as she ate spicy food, and that this may have made her breath smell as if she had been drinking as mouthwash contains alcohol, the panel did not find such an explanation plausible. On the balance of probabilities, and on the basis of its findings of fact that Ms McKay had attended school whilst under the influence of alcohol, the panel inferred that the true purpose of the mouthwash was to disguise the smell of alcohol on her breath.

The panel therefore found allegation 1.b. proved.

2. In around November 2012, spoke to a parent (Witness C) who was at the time with pupils (Witness C's children) and their friends near the School, you:

- a. Smelt of alcohol,**
- b. Appeared distressed,**
- c. Told her that:**
 - i. '[Redacted]',**
 - ii. '[Redacted]',**
 - iii. '[Redacted]',**
 - iv. '[Redacted]',**
- d. [Redacted];**

The panel heard oral evidence from Witness C and found her to be a credible and reliable witness. Her written and oral evidence were entirely consistent.

This event took place in November 2012 when Ms McKay was suspended from school.

Whilst it was suggested by Ms McKay that the meeting with Witness C took place away from the School, Witness C stated, and the panel found, that the conversation took place directly outside the school hall building when Witness C was collecting her children.

Witness C was sufficiently concerned about what took place that, on 20 November 2012, she wrote to Witness B.

Witness C set out in her letter exactly what took place and that Ms McKay said to Witness C the words particularised in allegation 2.c. above and used her hands to demonstrate in a manner alleged under 2.d. above.

Despite Witness C attempting to move away from Ms McKay, particularly as she did not wish her children to hear what Ms McKay was saying, Ms McKay continued to come towards her.

Witness C confirmed that Ms McKay was clearly distressed and also she could smell alcohol.

Ms McKay did not deny that a discussion took place but suggested that it was at the instigation of Witness C and away from the school. The panel rejected her evidence and found that it was Ms McKay who initiated the contact and subsequent conversation with Witness C.

In the circumstances, the panel found allegation 2.a. to 2.d. proved.

4. Told a colleague, Witness A that you had leukaemia when you did not;

The Deputy Head of the School, Witness A, gave evidence to the panel that, in the course of a telephone conversation on 26 November 2012, Ms McKay had informed him that she had been diagnosed with leukaemia. This was disputed by Ms McKay who stated that what she actually said to Witness A was that she was having blood tests and that, due to unexplained bruising, the option of leukaemia needed to be ruled out.

The panel preferred the evidence of Witness A who was certain of what had been said to him. More particularly, the panel took into account the fact that, by an email of the same date on which he held the conversation with Ms McKay, Witness A wrote to Witness B stating, 'during the conversation she told me that she had just been diagnosed with leukaemia and that she was very ill'.

The panel found the facts of allegation 4 proved.

5. Told a colleague, Witness B that you had ME when you did not;

Ms McKay accepted that she had told Witness B that she was suffering from ME.

However, Ms McKay had not been able to provide any medical evidence to support such a diagnosis. Neither the letter of 7 December 2012 nor 25 January 2013 from Ms McKay's GP made reference to her suffering from ME.

In an extract from Ms McKay's GP notes produced by Ms McKay on 22 February 2017, there is an entry dated 11 May 1992 which reads as follows:

"[Redacted]

Suggestions? ME? Stress etc..."

In an email dated 5 December 2012 to Witness B, Individual A of the school stated that Ms McKay had told her that she suffered from ME. This was confirmed in a letter from Witness B to Ms McKay dated 17 December 2012.

When giving evidence, Ms McKay stated that her father was medically qualified and that it was he who had informed her that she was suffering from ME.

However, as stated, there was no independent medical evidence to support Ms McKay's assertion that she suffered from ME.

Consequently, the panel found that Ms McKay had told Witness B that she had ME when there was no independent medical evidence to confirm that she did.

The panel therefore found the facts of allegation 5 proved.

6. Your actions at 3, 4, and 5 above were dishonest;

Allegation 3 had been withdrawn.

With regard to allegation 4, the panel had found that, whilst she attempted to deny it, Ms McKay had told Witness A that she had been diagnosed with leukaemia even though she had not. The panel found that this was deliberate. To the ordinary reasonable person, making a statement that she knew to be untrue was dishonest. Furthermore, the panel was satisfied that Ms McKay knew that, by those standards, she was being dishonest when she told Witness A that she had been diagnosed with leukaemia when she knew that it was not true.

Consequently, in respect of allegation 4, the panel found allegation 6 proved.

As for allegation 5 which had been found proved, the panel had not found the position to be so straightforward. The panel referred to, and relied on, its findings of fact under allegation 5 above. The panel was not satisfied, on the balance of probabilities, that Ms McKay knew, when she told Ms Button and Witness B that she had ME, that she did not in fact suffer from that condition. Even though there was no separate statement from him, the panel was prepared to accept that Ms McKay had been told by her father that she suffered from ME and that she was not knowingly telling an untruth when she told Witness B that she suffered from ME.

In the circumstances, the panel did not find allegation 6 proved in respect of allegation 5.

However, as a result of its finding in respect of allegation 4, the panel found allegation 6 proved.

That you have been convicted, at any time, of the following relevant offences, in that:

- 7. On 15 March 2005, at Isle of Wight Magistrates Court you were convicted of driving a motor vehicle with excess alcohol and failing to stop after an accident on 8 March 2005. You were sentenced to a community rehabilitation order for 12 months (subsequently revoked) and disqualification from driving for 28 months. You were ordered to pay costs of £70.00;**

The panel found the facts of the allegation proved. In doing so, it relied on Ms McKay's admission and the Certificate of Conviction dated 19 May 2014 which represented conclusive proof of the conviction.

The panel was particularly concerned to note that Ms McKay was found to have 111 micrograms of alcohol in 100 ml of breath. Taking account of the permitted level of 35 micrograms of alcohol in 100ml of breath, the reading was therefore over three times the permitted limit. Whilst the detail was not known, the panel also noted that Ms McKay had been involved in an accident and had then failed to stop.

- 8. On 26 June 2009, at Isle of Wight Magistrates Court you were convicted of driving a motor vehicle with excess alcohol on 14 June 2009 to 15 June 2009. You were sentenced to a community rehabilitation order 12 months unpaid work requirement 150 hours and disqualification from driving 36 months.**

The panel found the facts of the allegation proved. In doing so, it relied on Ms McKay's admission and on the Certificate of Conviction dated 19 May 2014 which represented conclusive proof of the conviction.

On this occasion, Ms McKay was found to have 93 micrograms of alcohol in 100 ml of breath which represents over 2½ times the permitted limit.

Findings as to unacceptable professional conduct, conduct that may bring the profession into disrepute and conviction of a relevant offence

The panel was satisfied that, in respect of allegations 1 to 6 (save for allegation 3 which had been withdrawn) that had been found proven; Ms McKay was guilty of unacceptable professional conduct and conduct that may bring the profession into disrepute. Her misconduct was of a serious nature, falling significantly short of the standards expected of a teacher.

In doing so, the panel has had regard to the document Teacher Misconduct: The Prohibition of Teachers, which the panel referred to as "the Advice".

The panel was concerned that Ms McKay had attended school when unfit to do so having consumed alcohol. This had occurred in 2005 and 2012 and there had been other

occasions when alcohol had been smelt on her breath by teachers when she had been at school. A parent had also smelt alcohol on Ms McKay's breath during this same period. This appeared to be an underlying issue when considered in conjunction with her convictions in 2005 and 2009 for driving with excess alcohol.

The panel was satisfied that the conduct of Ms McKay in relation to the facts found proven, involved breaches of the Teachers' Standards. The panel considered that, by reference to Part Two, Ms McKay was in breach of the following standards:

- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by
 - having regard for the need to safeguard pupils' well-being, in accordance with statutory provisions;
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach;

The panel had taken into account how the teaching profession was viewed by others and considered the influence that teachers may have on pupils, parents and others in the community. The panel had taken account of the uniquely influential role that teachers can hold in pupils' lives and that pupils must be able to view teachers as role models in the way they behave.

With regard to the convictions recorded against Ms McKay in 2005 and 2009 as particularised in allegations 7 and 8 above, the panel was again satisfied that such conduct involved breaches of the same Teachers' Standards.

The panel noted that the behaviour involved in committing the offences could have had an impact on the safety of members of the public.

The panel had also taken account of how the teaching profession was viewed by others. The panel considered that Ms McKay's behaviour in committing the offences could affect the public confidence in the teaching profession given the influence that teachers may have on pupils, parents and others in the community. These were not minor traffic offences nor did this relate to an isolated incident. Ms McKay had driven on two occasions when the level of alcohol in her breath was such that her ability to drive was seriously impaired. Indeed, in 2005, whilst over three times the limit, she had been involved in an accident and then left the scene without stopping. The sentences imposed by the Court were also, on each occasion, substantial for offences of that sort.

The panel considered that a finding that these convictions were relevant offences was necessary to reaffirm clear standards of conduct so as to maintain public confidence in the teaching profession.

Panel's recommendation to the Secretary of State

Given the panel's findings in respect of unacceptable professional conduct, conduct that may bring the profession into disrepute and the conviction of relevant offences, it was necessary for the panel to go on to consider whether it would be appropriate to recommend the imposition of a prohibition order by the Secretary of State.

In considering whether to recommend to the Secretary of State that a prohibition order should be made, the panel had to consider whether it was an appropriate and proportionate measure, and whether it was in the public interest to do so. Prohibition orders should not be given in order to be punitive, or to show that blame has been apportioned, although they are likely to have punitive effect.

The panel had considered the particular public interest considerations set out in the Advice and, having done so, had found a number of them to be relevant in this case, namely: the protection of pupils, the maintenance of public confidence in the profession, and declaring and upholding proper standards of conduct.

The panel was satisfied that Ms McKay's behaviour was incompatible with being a teacher and the panel relied on the following reasons:

- These were serious departures from the personal and professional conduct elements of the Teachers' Standards as outlined above;
- Despite having been convicted of driving with excess alcohol in 2005, Ms McKay committed an identical offence four years later. The circumstances of both offences, and, taking account of the readings, the amount of alcohol that Ms McKay must have consumed before deciding to drive, was a matter of great concern to the panel;
- Despite having received warnings about the fact that attending school whilst unfit through drink was unacceptable, Ms McKay continued to do so;
- Ms McKay had been found to be dishonest;
- The findings represented a deep-seated attitude which had led to harmful behaviour.

The panel had taken into consideration fully the fact that Ms McKay was a person of previous good character. It was also recognised that there was evidence, both in terms of written testimonials and the information provided by Ms McKay, to illustrate that Ms McKay had been a dedicated teacher when at the school and played a significant role in extra-curricular activities such as sport and drama productions.

The panel also accepted that Ms McKay made a valuable contribution through voluntary work in the community.

However, the panel had listened to Witness B who stated that Ms McKay would often be late with her work and that she concentrated unduly on such extra-curricular activities which had led to shortcomings in her core school work.

The panel also took full account of the medical issues which Ms McKay had had to contend with.

[Redacted]

The panel had also considered carefully the extracts from reports from the Occupational Health consultant to which it had been referred by Individual F.

However, the panel considered it was relevant that four years had elapsed between the two offences of driving with excess alcohol of which she had been convicted. The instances of her behaviour at school and in the conversation with Witness C were, on the basis of the panel's findings, also alcohol-related and spanned a period of seven years. It was reasonable to infer that Ms McKay's conduct throughout was drink-related.

With regard to the risk of repetition, this has to be linked with the observations and findings of the panel about Ms McKay's insight and remorse. Ms McKay maintained her denial that she had any drink-related issues. She had also not expressed any remorse for her conduct to include the convictions recorded against her.

The panel concluded that such a risk could not be discounted.

The panel was satisfied that a Prohibition Order was necessary in order to: protect pupils; maintain public confidence in the profession and to declare and uphold proper standards of conduct. The panel felt that this was proportionate, having weighed the interests of the public against those of Ms McKay. Whilst it did not doubt that the consequences would be significant, it bore in mind that the reputation of the profession and the maintenance of the public's trust in the profession was more important than the fortunes of any one individual member of the profession. This was the panel's recommendation.

The panel further considered whether to recommend that Ms McKay should be able to apply for the Prohibition Order to be set aside after a specified period or whether there should be no such provision.

The panel recommends that Ms McKay should be entitled to apply for a review of the Prohibition Order after a period of five years has elapsed. The panel considered that a period of five years was sufficient to mark to the general public and the profession that such behaviour was wholly inappropriate. It may also be sufficient for Ms McKay to reflect and then demonstrate that, over such a period, she fully and properly appreciated the attitude and behaviours required and that any issues that may exist with regard to alcohol consumption were completely resolved.

Decision and reasons on behalf of the Secretary of State

I have given this decision very careful consideration and have read carefully the recommendations made by the panel in respect of both sanction and prohibition order. I have noted the allegations that the panel has found proven and I have also recognised that the panel did not find dishonesty in one element of the allegation where dishonesty was charged.

I have also taken into account the guidance that the Secretary of State has published in respect of prohibition. It is important to balance the public interest with the interest of the teacher, and I have done that in this case. I have also recognised the need to be proportionate. A finding of unacceptable professional conduct, or conduct that may bring the profession into disrepute, or where an offence is found to be a relevant one, is itself a serious matter and a prohibition order may not always be the proportionate outcome. I have taken into account therefore the need to consider proportionality in reaching a judgement in this case.

In this case, the panel has found that, by reference to Part Two, Ms McKay was in breach of the following standards:

- Teachers uphold public trust in the profession and maintain high standards of ethics and behaviour, within and outside school, by
 - having regard for the need to safeguard pupils' well-being, in accordance with statutory provisions;
- Teachers must have proper and professional regard for the ethos, policies and practices of the school in which they teach;

These are serious matters and I have read with care the panel's approach to the findings.

The panel has also set out that it found Ms McKay's behaviour was incompatible with being a teacher and in doing so I note that the panel relied on the following reasons:

- These were serious departures from the personal and professional conduct elements of the Teachers' Standards as outlined above;
- Despite having been convicted of driving with excess alcohol in 2005, Ms McKay committed an identical offence four years later. The circumstances of both offences, and, taking account of the readings, the amount of alcohol that Ms McKay must have consumed before deciding to drive, was a matter of great concern to the panel;
- Despite having received warnings about the fact that attending school whilst unfit through drink was unacceptable, Ms McKay continued to do so;
- Ms McKay had been found to be dishonest;
- The findings represented a deep-seated attitude which had led to harmful behaviour.

I have also taken into consideration fully the fact that Ms McKay was a person of previous good character. The panel has set out how it has approached Ms McKay's good character, taking into account the evidence before it in terms of written testimonials and the information provided by Ms McKay. The panel has set out clearly, and I have taken this into account in my own decision the positive references including that Ms McKay had been a dedicated teacher when at the school and played a significant role in extra-curricular activities such as sport and drama productions. I have also noted the further mitigation considered by the panel in respect of other positive behaviours and also in respect of personal health.

In weighing all of these matters I have been mindful of the purpose of a prohibition order which includes the protection of pupils; maintenance of public confidence in the profession and the declaration and upholding of proper standards of conduct. I consider that in this case a prohibition order is proportionate, having weighed the interests of the public against those of Ms McKay.

I have also considered the matter of a review period. For the reasons that the panel has set out clearly I believe that a review period is appropriate in this case. I agree that a 5-year review period is proportionate.

This means that Ms Johanna McKay is prohibited from teaching indefinitely and cannot teach in any school, sixth form college, relevant youth accommodation or children's home in England. She may apply for the prohibition order to be set aside, but not until 7 March 2022, 5 years from the date of this order at the earliest. This is not an automatic right to have the prohibition order removed. If she does apply, a panel will meet to consider whether the prohibition order should be set aside. Without a successful application, Ms Johanna McKay remains prohibited from teaching indefinitely.

This order takes effect from the date on which it is served on the teacher.

Ms Johanna McKay has a right of appeal to the Queen's Bench Division of the High Court within 28 days from the date she is given notice of this order.



Decision maker: Alan Meyrick

Date: 1 March 2017

This decision is taken by the decision maker named above on behalf of the Secretary of State.